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OFFICE OF PETITIONS

In re Application of
Poirer et al
Application No. 10/627,407
Filed: July 25, 2003
Attorney Docket No. PCC115

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ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on May 2, 2005, to accept an unintentionally delayed claim under 35 USC 120 for the benefit of prior- filed nonprovisional Application 10/314,911 filed December 9, 2002.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR §§1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(I) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1)

A reference to add the above-noted, prior-filed applications on page one following the first sentence of the specification has been included in an amendment filed May 2, 2005. However, the amendment is not acceptable as drafted since it claims reference to an application


(60/398,744) in which there are no common inventors. It appears petitioner may have intended to reference provisional application no. 60/398, 774 .

Accordingly, before the petition under 37 CFR 1.78 (a)(3) can be granted a substitute amendment referencing the correct prior filed applications is required.

Further correspondence with respect to this matter may be addressed as follows:

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

Any inquiries concerning this decision may be directed to Charlema R. Grant at (571) 272-3215.


Frances Hicks
Petitions Examiner
Office of Petition